

BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

JOHN J. JERRYSTONE, M.D.
Certificate #A-44089

Respondent.

File No: 04-92-16575

OAH No: L-9503077

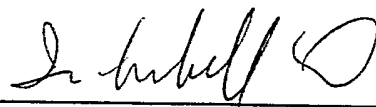
DECISION AND ORDER

The attached Stipulation and Decision is hereby adopted by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective on December 8, 1995.

DATED November 8, 1995.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA



Ira Lubell, M.D.
Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 RICHARD D. GARSKE,
Deputy Attorney General
3 State Bar No. 50569
Department of Justice
4 110 West A Street, Suite 1100
Post Office Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 645-2075

6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DIVISION OF MEDICAL QUALITY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation) No. D-5068
12 Against:)
13) L-9503077
14 JOHN J. JERRYSTONE, M.D.)
555 N. State College Blvd.)
14 Anaheim, Ca 92806)
15) STIPULATION IN
Physician & Surgeon's Certificate) SETTLEMENT AND
15 No. A-44089,) DECISION
16 Respondent.)
17

18 In the interest and the responsibilities of the
19 Division of Medical Quality (Division), Medical Board of
20 California (Board), the parties submit this Stipulation in
21 Settlement and Decision to the Division of Medical Quality of the
22 Board for its approval and adoption as the final disposition of
23 the Accusation.

24 The parties stipulate the following is true:

25 1. An Accusation, No. D-5068, is currently pending
26 against John J. Jerrytone, M.D. (respondent), before the Division
27 of Medical Quality of the Board. Said Accusation is attached
28 hereto as Exhibit A and incorporated by reference as if fully set

1 forth herein.

2 2. Respondent is fully aware of the charges and
3 allegations contained in Accusation No. D-5068 on file with the
4 Board, and respondent has been fully advised with regard to his
5 rights in this matter.

6 3. Respondent is presently represented by the law
7 offices of Rudnick & Partos, Michael J. Partos, Esq., 42 East
8 Colorado Blvd. 2nd Flr., Pasadena, CA 91105.

9 4. Respondent, having benefit of counsel, understands
10 the nature of the charges alleged in the Accusation, and that the
11 charges and allegations constitute cause for imposing discipline
12 upon his license to practice. Respondent is fully aware of his
13 right to a hearing on the charges and allegations contained in
14 said Accusation, his right to reconsideration, appeal and all
15 other rights accorded pursuant to the California Business and
16 Professions Code and Government Code and freely and voluntarily
17 waives such rights.

18 5. Respondent admits the truth of each and every
19 allegation of Accusation No. D-5068, except paragraphs 12 and 13,
20 and agrees that respondent has thereby subjected his license to
21 discipline. Respondent agrees to the Board's imposition of
22 penalty as set out in the Decision Below.

23 6. This agreement is made for the purpose of settling
24 Accusation No. D-5068, and for the use of the Medical Board of
25 California in any future proceedings between the Medical Board of
26 California and John J. Jerrytone, M.D., or in any action taken by
27 any governmental body responsible for licensing physicians and
28 surgeons.

7. Respondent is entering into this Stipulation and Waiver in order to avoid the inconvenience and expense of future litigation, including a contested administrative proceeding.

8. All admissions of fact and conclusions of law contained in this Stipulation are made exclusively for this proceeding and any future proceedings between the Board and the Respondent and shall not be deemed to be admissions for any purpose in any other administrative, civil, or criminal action, forum or proceeding.

9. In the event this Stipulation in Settlement and Decision is rejected for any reason by the Board, it will be of no force and effect for either party.

WHEREFORE, IT IS STIPULATED the Board may, without further notice of formal proceeding, issue and adopt and enter as its order the Stipulation in Settlement and Decision, including the following:

A. Physician's and Surgeon's Certificate No. A-44089 issued to respondent John J. Jerrytone, M.D., is revoked, provided, however, that the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

CONDITIONS

1. Within sixty (60) days of the effective date of this decision, respondent shall take and pass an oral clinical competency examination in a subject to be designated by the Division. The examination shall be administered by two examiners selected by the Division's designated Regional Medical Consultant. A passing score

1 shall be an average of seventy percent (70%) of the combined
2 scores of the two examiners. If respondent fails this
3 examination, respondent must take and pass a re-examination
4 consisting of a written as well as an oral clinical
5 examination. The waiting period between repeat examinations
6 shall be at three month intervals until success is achieved.
7 Respondent shall pay the cost of the first examination and
8 shall pay the cost of any subsequent re-examinations.
9 Respondent shall make payment within ninety (90) days
10 following the administration of any examination, and failure
11 to pay timely will constitute a violation of probation.
12 Further, respondent's practice and further testing will be
13 suspended until payment is received.

14 2. If respondent fails the oral clinical examination
15 as set forth in this Stipulation, respondent shall cease the
16 practice of medicine until the re-examination has been
17 successfully passed, as evidenced by written notice to
18 respondent from the Division. Failure to pass the required
19 examination, not later than 100 days prior to the
20 termination date of probation, shall constitute a violation
21 of probation.

22 3. Within ninety (90) days of the effective date of
23 this Decision and on an annual basis thereafter, respondent
24 shall submit to the Division of Medical Quality for its
25 prior approval an educational program or course to be
26 designated by the Division, which shall not be less than 40
27 hours per year, for each year of probation. This program
28 shall be in addition to the continuing medical education

1 requirements for relicensure. Following the completion of
2 each course, the Division or its designee may administer an
3 examination to test respondent's knowledge of the course.
4 Respondent shall provide proof of attendance for 65 hours of
5 continuing education of which 40 hours were in satisfaction
6 of this condition and were approved in advance by the
7 Division.

8 4. Respondent shall pay to the Division its costs of
9 investigation. The total amount shall be \$6500.00 and shall
10 be paid during the first year of probation in quarterly
11 installments.

12 5. Within sixty (60) days of the effective date of
13 this decision, respondent shall submit to the Division for
14 its prior approval a course in Ethics which respondent shall
15 successfully complete during the first year of probation.

16 6. Within 60 days of the effective date of this
17 decision, respondent shall submit to the Division for its
18 prior approval a community service program in which
19 respondent shall provide free medical services on a regular
20 basis to a community or charitable facility or agency for at
21 least 10 hours a month for the first 24 months of probation.

22 7. Respondent shall maintain a record of all
23 controlled substances prescribed, dispensed or administered
24 by respondent during probation, showing all the following:
25 (1) the name and address of patient, (2) the date, (3) the
26 character and quantity of controlled substances involved,
27 and (4) the indications and diagnosis for which the
28 controlled substances were furnished.

1 Respondent shall keep these records in a separate file
2 or ledger, in chronological order, and shall make them
3 available for inspection and copying by the Division or its
4 designee, upon request.

5 8. Within 30 days of the effective date of this
6 decision, respondent shall submit to the Division, or its
7 designee for its prior approval, a plan of practice in which
8 respondent's practice shall be monitored by another
9 physician in respondent's field of practice, who shall
10 provide periodic reports to the Division or its designee.

11 If the monitor resigns or is no longer available,
12 respondent shall, within 15 days, move to have a new monitor
13 appointed, through nomination by respondent and approval by
14 the Division or its designee.

15 9. Respondent shall obey all federal, state, and
16 local laws, and all rules governing the practice of
17 medicine in California.

18 10. Respondent shall submit quarterly declarations
19 under penalty of perjury on forms provided by the Division,
20 stating whether there has been compliance with all the
21 conditions of probation.

22 11. Respondent shall comply with the Division's
23 probation surveillance program.

24 12. Respondent shall appear in person for interviews
25 with the Division's medical consultant upon request at
26 various times and with reasonable notice.

27 ///

28 ///

1 13. In the event respondent shall leave California to
2 reside or practice outside the State, respondent must notify
3 the Division in writing of the dates of departure and
4 return. Periods of residence or practice outside
5 California will not apply to the reduction of this
6 probationary period.

7 14. If respondent violates probation in any respect,
8 the Division, after giving respondent notice and the
9 opportunity to be heard, may set aside the stay order and
10 impose the revocation of respondent's certificate. If an
11 accusation or petition to revoke probation is filed against
12 respondent during probation, the Division shall have
13 continuing jurisdiction until the matter is final and the
14 period of probation shall be extended until the matter is
15 final.

16 15. Upon successful completion of probation,
17 respondent's certificate will be fully restored.

18 \\\

19 \\\

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

26 \\\

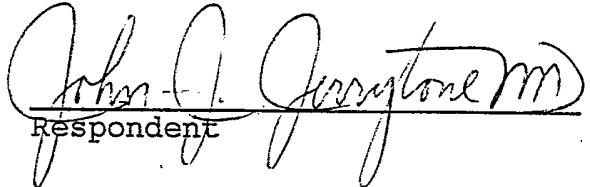
27 \\\

28 \\\

1 ACKNOWLEDGEMENT


2 I have read the above Stipulation in Settlement and Decision
3 in Case No. D-5068, and I fully understand, accept, and consent
4 to all of the provisions therein.

5 DATED: 6-27-95

6 
7 Respondent

8 APPROVED AS TO FORM AND CONTENT:
9

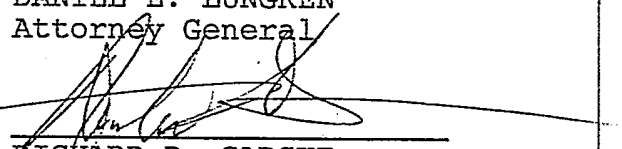
10 DATED: 6/29-95

11 
12 MICHAEL J. PARTOS, Esq.
13 RUDNICK & PARTOS

14 Attorneys for Respondent

15 DATED: 6/19/95

16 DANIEL E. LUNGREN
17 Attorney General

18 
19 RICHARD D. GARSKE
20 Deputy Attorney General

21 Attorneys for Complainant
22
23
24
25
26
27
28

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 RICHARD D. GARSKE,
Deputy Attorney General
3 [State Bar No. 50569]
Department of Justice
4 [110 West "A" Street, Suite 700]
P.O Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 237-7815
6
7 Attorneys for Complainant

8
9 BEFORE THE
DIVISION OF MEDICAL QUALITY
10 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation
Against:

Case No. D-5068

13 JOHN J. JERRYSTONE, M.D.
14 555 N. State College Blvd.
Anaheim, CA 92806

ACCUSATION

15
16 California Physician's and
17 Surgeon's Certificate
No. A44089

18 Respondent.
19

20 COMES NOW Complainant Thomas Heerhartz, who as cause
21 for disciplinary action against the above-named and -encaptioned
22 Respondent, charges and alleges as follows:

23 1. Complainant is the Acting Executive Director of the
24 Medical Board of California, Department of Consumer Affairs,
25 State of California (hereinafter the "Board"), and makes and
26 files this Accusation solely in his official capacity as such and
27 not otherwise.

1 2. License Status. On or about October 13, 1987, John
2 Joseph Jerrytone, M.D., Respondent herein and hereinafter
3 referred to as "Respondent", was issued Physician's and Surgeon's
4 Certificate No. A44089 by the Board, authorizing him to practice
5 medicine in the State of California. At all times herein
6 relevant said Certificate was, and now is, in full force and
7 effect. Respondent is not authorized to supervise Physician
8 Assistants.

9 3. Jurisdiction. Section 2220 of California's
10 Business and Professions Code [hereinafter, "the Code"] provides,
11 in pertinent part, that the Division of Medical Quality may take
12 action against all persons guilty of violating any of the
13 provisions of the Medical Practice Act, i.e., Chapter 5 of
14 Division 2 of the Code. Section 2227 of the Code provides that a
15 licensee whose matter has been heard by the Division of Medical
16 Quality, by a medical quality review committee or a panel of such
17 committee, or by an administrative law judge, or whose default
18 has been entered, and who is found guilty may: (a) have his or
19 her certificate revoked upon order of the division; (b) may have
20 his or her right to practice suspended for a period not to exceed
21 one year upon order of the division or a committee or panel
22 thereof; (c) may be placed on probation upon order of the
23 division or a committee or panel thereof; (d) may be publicly
24 reprimanded by the division or a committee or panel thereof;
25 and/or (e) may have such other action taken in relation to
26 discipline as the division, a committee or panel thereof, or an
27 administrative law judge deems proper.

1 4. Summary of Allegations. This Accusation is
2 brought, and Respondent is subject to disciplinary action,
3 pursuant to section 2234 of the Medical Practice Act
4 [Unprofessional Conduct] in it self, and in conjunction with
5 sections 2234(c) [Repeated Negligent Acts], 2234(d)
6 [Incompetence], and 2234(e) [Dishonesty], 2242 [Furnishing Drugs
7 Without A Medical Indication], and 2261 [False Representations In
8 A Medically-Related Document] of that Act, as well as sections
9 725 [Excessive Prescribing] and 810 [False or Fraudulent
10 Submission of Insurance Claims] of the Business and Professions
11 Code.

12 ALLEGATIONS

13 Factual Predicate

14 5. Patient L.M.H.

15 A. On or about September 16, 1991, one L.M.H., age 2,
16 was taken to the Harvard Family Medical Associates, Inc., in
17 Fountain Valley, California,^{1/} with a chief complaint of a cough,
18 congestion, and runny nose, of two days's duration. She was seen
19 by Respondent, who examined her. His physical examination
20 revealed a hyperemic pharynx^{2/} and "nasal congestion" with no
21 other remarkable physical findings recorded. (Her temperature
22 was normal @ 98.2°.) Respondent's diagnosis was a "URI" [upper
23

24 1The Harvard Family Medical Associates, Inc., is the successor to the Lehman Medical Clinic, whose director Kent Walter
25 Lehman, M.D., was disciplined by the Board in August 1992, for medical insurance fraud. Dr. Lehman subsequently sold his
26 interest to one Dr. Silver.

26 2The pharynx is a muscular tube, lined with mucous membrane, that extends from the beginning of the esophagus up to the
27 base of the skull; it is the section of the digestive tract that extends from the nasal cavities to the larynx, there becoming
28 continuous with the esophagus. The pharynx acts as a passageway for food from the mouth to the esophagus and as an air
29 passage from the nasal cavity and mouth to the larynx. It also acts as a resonating chamber for the sounds produced in the
30 larynx. (See e.g., The Bantam Medical Dictionary (Bantam ed. 1982) at p. 312.)

Hyperemia means the presence of excess blood in the vessels supplying a part of the body. (Id. at p. 200.)

1 respiratory infection] and "pharyngitis" [an inflammation of the
2 pharynx]. A throat and nose culture was done, prescriptions were
3 given for an antibiotic (Amoxicillin) and Triaminic, and
4 Respondent injected 1/2cc of Lincocin (an antibiotic), 1/2cc of
5 Decadron (a corticosteroid), and 1/4cc of Benadryl (an
6 antihistamine) intramuscularly. However, the exact milligram
7 dosages of the injected medications are not apparent.^{3/}

8 Respondent charged and billed L.M.H.'s father's
9 insurance company \$315 for this visit: \$175 for a new patient
10 visit, \$50 for the nose and throat cultures, and \$75 for three
11 intramuscular injections of medications.

12 B. L.M.H. was taken back to see Respondent two days
13 later, September 18th, with chief complaints of vomiting, fever,
14 and sweating without diarrhea during the previous 24 hours.
15 Respondent examined her and no major changes in the physical
16 findings were noted, although she did have a low grade fever of
17 99.8°. A diagnosis of gastroenteritis (gastritis) was made.^{4/}
18 Respondent gave her an injection (injections -?) of Benadryl-
19 1/4cc and Vistaril-1/4cc (a tranquilizer/anti-anxiety
20 medication).

21 The billing charged by Respondent for this visit
22 was \$175: \$125 for a comprehensive established patient visit and
23 \$50 for two intramuscular injections.

24 C. On September 27th L.M.H. was again seen by
25

26 ³Nor is it apparent, on this or on subsequent visits, whether the medications were given in combination in one injection, or separately. The former is more likely the case.

27 ⁴Gastritis is an inflammation of the lining (mucosa) of the stomach. Gastroenteritis is an inflammation of the stomach and intestine. It is usually due to viruses or bacteria or food-poisoning toxins, and causes vomiting and diarrhea. It usually lasts 1 to 3 days. (The Bantam Medical Dictionary, supra.)

1 Respondent for a complaint of ear pain since the prior evening
2 and a 2-week cough, apparently persisting since her initial
3 visit. Her temperature was recorded as 100°. Respondent
4 examined her and found a red tympanic membrane but otherwise no
5 significant findings.^{5/} He diagnosed "otitis media^{6/1} and
6 pharyngitis." He ordered a nasal culture and tympanometry^{7/}, and
7 injected Lincocin 1/2cc, Kenalog/Celestone (a corticosteroid)
8 1/2cc, and Benadryl 1/4cc, intramuscularly. Again, no milligram
9 dosages were recorded, and again it is not clear whether the
10 medications were injected individually or in combination.
11 Respondent also again prescribed Amoxicillin 250mg to be taken
12 three times a day.

13 For this visit, Respondent billed and charged
14 \$315: again the \$125 for a comprehensive established patient
15 visit, \$75 for the tympanometry, \$15 for laboratory, \$25 for a
16 nasal culture, and \$75 for three intramuscular injections of
17 medications.

18 D. On September 30th L.M.H. was seen for a follow up
19 on her ear pain and cough. Respondent examined her and
20 instructed her [mother] that she finish the prescribed
21 antibiotics.

22 For this Respondent charged the \$125 for an
23

24 ⁵The tympanic membrane is the thin, semitransparent, oval-shaped membrane separating the middle ear from the external ear.

25 ⁶Otitis is an inflammation of the ear. Otitis media is inflammation, usually due to viral or bacterial infection, of the middle ear
26 (the chamber lying behind the eardrum and containing the three bony ossicles that conduct sound to the inner ear). Symptoms
include severe pain and a high fever. Unless treated with antibiotics, it may lead to conductive deafness. (The Bantam Medical
Dictionary, supra.)

27 ⁷Tympanometry is an objective test to measure hearing status. By inserting a probe in the external canal that both presents
and measures the sound pressure level of a tone, the acoustic impedance of the middle ear can be assessed. Tympanometry
is the measurement of impedance as a function of ear canal air pressure. It is particularly useful for detecting of middle ear
disorders. (See, Cecil, Textbook of Medicine (Wyngaarden & Smith eds.; 16th ed. 1982) at pp. 1959-1960.

1 established patient visit, comprehensive examination fee.

2 E. On December 2nd, Respondent again saw L.M.H. for a
3 complaint of left ear pain that came on that day. Respondent
4 examined her: her temperature was normal and physical findings
5 were within normal limits with the exception of a red tympanic
6 membrane and nasal congestion. Tympanometry was done again, a
7 prescription was written (for her to take Dimetapp, t.i.d.), and
8 Respondent gave intramuscular injection(s-?) of Lincocin 1/2cc,
9 Celestone 1/2cc, and Benadryl 1/2cc. (Again no milligram dosages
10 are given, and again, it is not clear whether the three
11 medications were given in combination in one injection or
12 separately in three.) Respondent made a diagnosis of left otitis
13 media.

14 For this visit Respondent charged and billed
15 L.M.H.'s father's Insurance Carrier \$912 [sic!]: \$125 for an
16 established patient visit comprehensive; now \$712 [sic!] for the
17 tympanometry; and \$75 for three injections.

18 *

19 Negligence - MPA § 2234(c)

20 6. Section 2234 of the Medical Practice Act provides
21 that the Division of Medical Quality shall take action against
22 any licensee who is guilty of unprofessional conduct.
23 Subdivision (c) of the section provides that the unprofessional
24 conduct for which a licensee may be disciplined includes the
25 commission of repeated negligent acts.

26 7. Respondent is subject to disciplinary action
27 pursuant to section 2234 for unprofessional conduct as defined by

1 subdivision (c) because the matters set forth hereinabove at
2 paragraph 5 indicate that he was guilty of committing repeated
3 negligent acts in the course of his care, treatment, and case
4 management of L.M.H. Particularly, and without limitation, the
5 following of Respondent's actions departed from the standards of
6 the medical community:

7 A. *Respondent Inappropriately Used The Lincocin*
8 *[Lincomycin]*. There was absolutely no justification for
9 Respondent to have used Lincocin in his treatment of L.M.H.
10 Lincomycin (Lincocin) has generally been replaced by other less
11 toxic antibiotics because of its widely known significant risk
12 factor for gastrointestinal side effects (such as enterocolitis),
13 and its side effects on other systems. (See e.g., Physician's
14 Desk Reference ["PDR"] (45th ed. 1991) at pp. 2239-2240.)
15 Indeed, the "gastroenteritis" that L.M.H. developed two days
16 after the first injection, was probably caused by the Lincomycin.

17 L.M.H. was seen by Respondent for relatively uncomplicated
18 illnesses during a period of less than three months time,
19 involving five different visits. As mentioned, Lincocin has a
20 significant risk factor with side effects that far outweigh its
21 usefulness in a benign illness that is uncomplicated, as was the
22 case on L.M.H.'s first visit. Indeed, the warning label
23 accompanying the drug, and the Physician's Desk Reference notes
24 the following:

25 "Lincomycin therapy has been associated with severe
26 colitis which may end fatally. Therefore, it should be
27 reserved for serious infections where less toxic

1 antimicrobial agents are inappropriate...." (PDR at p.
2 2239.)

3 Yet Respondent administered Lincocin to L.M.H. on the very
4 first visit. But then, when L.M.H. returned two days later on
5 September 18, 1991, with a chief complaint of vomiting without
6 diarrhea --what Respondent described as gastritis, he should have
7 been somewhat aware that that could have been a potential side
8 effect of the Lincocin. Nevertheless, on the subsequent visits
9 on September 27th and December 2nd, with a left otitis media,
10 Respondent again used it as an antibiotic drug of choice (along
11 with Amoxicillin). His doing so then also thereby departed from
12 the standard of the community.

13 In addition, the warning label for the drug and the
14 Physician's Desk Reference also notes the following:

15 "It [Lincomycin] should not be used in patients with
16 nonbacterial infections, such as most upper respiratory
17 tract infections." (Ibid.)

18 Respondent's using the drug was trebly inappropriate; it was
19 certainly not appropriate to use it for a child with the minor
20 illness presented in this case on either the first or subsequent
21 occasions, and it was especially not appropriate for Respondent
22 to have used it in light of his suspecting an upper respiratory
23 infection, as he did in his diagnosis on L.M.H.'s very first
24 visit.

25 Respondent's repeated use of the drug as his drug of choice
26 under the circumstances repeatedly departed on each occasion from
27 the standard of the community.

1 B. Respondent's Inappropriate Use of Other Medications.

2 Respondent also departed from the medical community's standard of
3 practice in his use of other medications. For example,

4 --The Kenalog or Decadron. The use of a steroid such
5 as Kenalog or Decadron was not indicated in view of the
6 benign process taking place at the first visit, namely an
7 uncomplicated URI. Although one injection of a steroid
8 (again, there is no indication of the actual dosage),
9 probably would not provoke other major side effects, such as
10 immediate poor resistance to infection or other long-term
11 side effects of steroid use, it was nonetheless
12 inappropriate to prescribe it in light of the potential harm
13 that it could have caused to the two year old, without
14 giving any apparent benefit to her at the time.

15 --The Benadryl. The addition of Benadryl to the
16 injectable mix was a completion of a "shotgun" type of
17 injection, and another example of Respondent's administering
18 a superfluous and unnecessary medication.

19 --The Amoxicillin. On her first visit on September 16,
20 1991, Respondent prescribed Amoxicillin for L.M.H.'s
21 infectious processes. He used it again on September 27th,
22 this time for the left otitis media, two weeks after the
23 initial onset of her illness. One would have to consider
24 the otitis media as a sequel and complication of the
25 original illness which started two weeks previously, and
26 certainly an appropriate change in drug of choice to an
27 antibiotic that would broaden the spectrum, such as a

1 cephalosporin, would have been indicated rather than
2 continuing an antibiotic that had failed to prevent the
3 complication.

4 With all of these actions Respondent departed from
5 the basic standard of care for the reasons mentioned: both with
6 the injections as well as with his faulty and futile use of
7 antibiotics.

8 *

9 Excessive Prescribing- B&P Code § 725

10 8. Business and Professions Code section 725 provides
11 that repeated acts of clearly overprescribing or administering
12 drugs constitutes unprofessional conduct by a physician.^{8/}

13 9. Respondent is also subject to disciplinary action
14 for unprofessional conduct under section 2234 and now pursuant to
15 section 725 of the Code because, the matters set forth at
16 paragraph 5 and amplified at paragraphs 7A and 7B indicate that
17 he repeatedly clearly excessively prescribed or administered
18 drugs in the course of his care, treatment and case management of
19 L.M.H. To recapitulate here:

20 Besides the injections of the antimicrobial Lincomycin
21 (Lincocin), there was no justification in the medical record
22 for Respondent to have also administered various
23 combinations of parenteral corticosteroids
24 (Celestone/Decadron), antihistamines (Benadryl), and anti-
25 anxiety (Vistaril) medications on four different occasions
26

27 ⁸Repeated acts of clearly excessive prescribing or administering of drugs or treatment ... as determined
by the standard of the [medical community] is unprofessional conduct for a physician and surgeon...."

1 to a two year old, who was not in any apparent need for the
2 measures. The unnecessary, repeated administration of the
3 four types of medications constituted repetitive clearly
4 excessive administration of them.^{9/} So too his
5 inappropriate continued use of the antibiotic Amoxicillin.

6 *

7 Furnishing A Dangerous Drug Without Medical Indication

8 10. Section 2242 of the Medical Practice Act provides
9 that prescribing, dispensing, or furnishing dangerous drugs as
10 defined in section 4211 of the Code, without a good faith prior
11 examination and medical indication therefor, constitutes
12 unprofessional conduct.

13 11. Respondent is also subject to disciplinary action
14 pursuant to section 2234 for unprofessional conduct because the
15 matters set forth hereinabove at paragraphs 7A and 7B indicate
16 that he has also demonstrated unprofessional conduct within the
17 meaning of section 2242, in that he repeatedly furnished
18 dangerous drugs^{10/} to L.M.H. without medical indication (i.e.,
19 without a medical necessity) therefor.

20 Incompetence- MPA § 2234(d)

21 12. Subdivision (d) of section 2234 of the Medical
22 Practice Act provides that the unprofessional conduct
23 for which a licentiate may be disciplined also includes

24
25 9A second matter should be noted with respect to Respondent's use of these medications. All of the medication are ordered
26 in terms of the amount or volume of medication (e.g., 1/2cc and 1/4cc) and not in a way which would indicate the dosage given.
For example, Respondent repeatedly ordered 1/4cc Benadryl and one time 1/2cc Benadryl. But since Benadryl comes in
concentrations of 50mg/cc and 10mg/cc, it is not clear whether L.M.H. received 12.5mg or 2.5mg on three occasions, and 25mg
or 5mg on the other. Vistaril also comes in dosages of 25mg/cc and 50mg/cc, and Respondent's records do not indicate which
dosage was given by him.

27 10Lincocin (Lincomycin), Kenalog/Celestone, Decadron, and Benadryl are all dangerous drugs within the meaning of section
4211 of the Business and Professions Code.

1 incompetence, i.e., a lack of knowledge of medical matters or an
2 inability to discharge one's professional obligations.

3 13. Respondent is also subject to disciplinary action
4 pursuant to section 2234 for unprofessional conduct, now as
5 defined by subdivision (d) of the section, because the matters
6 set forth hereinabove at paragraphs 7A, 7B, 7C and 9 indicate
7 that he has exhibited incompetence in the course of his care and
8 treatment of L.M.H., by showing woeful ignorance of medical-
9 pharmacology and by manifesting an inability to discharge his
10 professional obligation to provide proper care to his patients.

11 Particularly, but without limitation, each aspect of
12 his incompetence was demonstrated by Respondent's inappropriately
13 using the dangerous Lincocin on the two year old, by compounding
14 that with also injecting her with an unnecessary smorgasbord of
15 other medications on more than one occasion, and by failing to
16 switch to another antibiotic when it became apparent that the one
17 he was using (Amoxicillin) was not effective.

18 Further, unless there was some secondary benefit to be
19 gained by giving injections instead of prescribing oral
20 medications, such as financial reward being greater with the
21 former, Respondent demonstrated a lack of knowledge not only that
22 the potential for adverse side effects from the injected
23 medications were far in excess of their expected benefits from
24 the injected medications, but also of the fact that the benefits
25 from an injection itself would be very short-lived in the
26 treatment of the disease at hand.

27 *

1 Unprofessional Conduct In Se - § 2234

2 14. Again, section 2234 of the Medical Practice Act
3 provides that the Division of Medical Quality shall take action
4 against a licensee who is guilty of unprofessional conduct. It
5 is unprofessional for a physician to blatantly excessively bill
6 charges for services rendered.

7 15. Respondent is subject to disciplinary action
8 pursuant to section 2234 for unprofessional conduct in addition
9 to the reasons set forth hereinabove, because the matters set
10 forth as paragraph 5 indicate that he has been guilty of
11 unprofessional conduct in general, in and of itself, by
12 excessively billing the insurance carrier for the services he
13 rendered to L.M.H. Particularly, and without limitation, the
14 following indicates that he has conducted himself in a most
15 unprofessional manner by repeatedly charging grossly excessive
16 fees for relatively simple and uncomplicated office visits and/or
17 procedures:

18 A. *Excessive Fees for Office Visits.*

19 --L.M.H. ('s father's insurance carrier) was charged
20 and billed \$175 for her first visit on September 16, 1991.
21 This was excessive since there was not an in-depth history
22 and physical examination performed (as would be done on an
23 annual physical); rather the visit was a straightforward,
24 simple examination, requiring only 11 lines of sparse
25 recorded notes. And, Respondent's handwritten notes for the
26 date are consistent with a brief or limited physical
27 examination.

1 --The second visit of September 18th required 8 lines
2 of sparse notes, and yet this simple visit for
3 gastroenteritis cost \$125 for an "established pt. visit
4 comp." This was clearly not a comprehensive examination or
5 visit, yet the charge indicates a more involved interaction.
6 Further, a charge of \$125 for a subsequent visit for an
7 established patient is at least three times in excess of the
8 usual and customary charge for that service in the
9 community. And that bloated fee reappears for each of the
10 remaining three visits.

11 --The \$125 ("established pt. visit comp.") fee is not
12 only charged again for the three subsequent visits, but
13 during one of them L.M.H. was not seen by Respondent, but
14 merely received laboratory results.

15 B. *Excessive Fees For The Injections.* Respondent
16 charged \$25 for each individual medication that were given
17 in the injections, when they were apparently given in
18 combination with but one needle on each visit. This clearly
19 violates the community standard for charging for a multiple-
20 medication injection.

21 C. *Excessive Fee For The Tympanometry.* On September
22 27th, a tympanometry was performed and the charge was \$75.
23 This charge is grossly excessive compared with the community
24 standard. On December 2nd, another tympanometry was
25 performed on the same patient yet the charge, with the same
26 procedure code, was \$712! The charge is blatantly and
27 obscenely excessive.

1 *

2 Unprofessional Conduct - § 2234, re:
3 False Representations In A Medical Document - § 2261
4 False and Fraudulent Insurance Claims - B&P § 810
5 Acts Involving Dishonesty and Corruption - § 2234(e)

6 16. Once again, under section 2234 of the Medical
7 Practice Act, the Division of Medical Quality may take action
8 against a physician who has been guilty of unprofessional
9 conduct. But now in that regard,

10 --section 810 of the Business and Professions Code provides
11 that presenting a false or fraudulent claim for payment
12 under an insurance contract constitutes unprofessional
13 conduct and grounds for disciplinary action against a
14 physician¹¹;

15 --section 2261 of the Medical Practice Act provides that
16 unprofessional conduct includes knowingly making or
17 signing any document directly or indirectly related to
18 the practice of medicine, which falsely represents the
19 existence of a state of facts; and

20 --subdivision (e) of section 2234 of the Medical Practice
21 Act provides that the unprofessional conduct for which
22 a physician may be disciplined also includes "the
23 commission of any act involving ... dishonesty ...
24 which is substantially related to the qualifications,
25 functions, or duties of a physician...."

26 17. Respondent is further subject to disciplinary
27 action for unprofessional conduct under section 2234 of the
28 Medical Practice Act, and now also under section 810 of the
29 Business and Professions Code, because the matters just described
30 at paragraphs 15A, 15B and 15C indicate that in the course of his
31 care, treatment and management of L.M.H., he has also

32 ¹¹Section 810 provides in applicable part: "It shall constitute unprofessional conduct and grounds for disciplinary action ... for
33 a health care professional to do any of the following in connection with his professional activities:

34 (1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a
35 contract of insurance.

36 (2) Knowingly prepare, make or subscribe any writing with intent to present or use the same, or to allow it to be
37 presented or used in support of any such claim...."

Subdivision (b) of the section defines a health care professional to include a physician.

1 demonstrated unprofessional conduct within the meaning of section
2 810 of the Code, as well as sections 2234(e) and 2261 of the
3 Medical Practice Act, by committing acts involving dishonesty in
4 the course of his practice by submitting false and fraudulent
5 insurance claims to the insurance carrier for payment of services
6 rendered to her. Particularly, those matters show that
7 Respondent excessively billed the Carrier for his services and to
8 disguise that did so in a manner which did not truly represent
9 the simple nature of the services that were actually performed.


10 *

11 WHEREFORE, Your Complainant requests that the Board hold a
12 hearing on the matters alleged herein, and following said
13 hearing, issue a decision:

14 1. Revoking or suspending Physician's and Surgeon's
15 Certificate No. A44089 heretofore issued to respondent John J.
16 Jerrytone, M.D.; and/or

17 2. Taking such other and further action as the Board
18 deems meet in the premises.

19
20 DATED: January 8, 1993

21 
22 THOMAS HEERHARTZ
23 Acting Executive Director
24 Medical Board of California
25 Department of Consumer Affairs
26 State of California

27 Complainant

22
23
24
25
26
27